

The Constitutional Court's Judicial Activism in Indonesia: Constitutional Boundaries and a Progressive Legal Perspective

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ABSTRACT:

Background: The Constitutional Court plays a strategic role in Indonesia's constitutional system as the guardian of the constitution, authorized to review laws against the 1945 Constitution. In practice, several Constitutional Court decisions demonstrate a tendency toward judicial activism, where judges not only interpret legal norms but also expand or create new ones. This phenomenon has given rise to debate regarding the limits of the Constitutional Court's authority within the framework of the separation of powers and its implications for the development of national law.

Aims: This study aims to analyze the role of the Constitutional Court in implementing judicial activism and assess the effectiveness of this practice from a progressive legal perspective.

Methods: This study uses a normative legal research approach with a statute approach, a case approach, and a conceptual approach. The research data was obtained through a literature review, which included primary legal materials in the form of legislation and Constitutional Court decisions, as well as secondary legal materials in the form of books, scientific journals, and academic literature. Data analysis was conducted qualitatively through data reduction, data presentation, and conclusion drawing.

Result: The research findings indicate that the Constitutional Court has implemented judicial activism in several of its decisions, reflected in decisions that are corrective, protective, and adaptive to social dynamics. This practice is evident in several important decisions that broaden the interpretation of legal norms to protect citizens' constitutional rights and fill legal gaps in the legal system.

Conclusion: From a progressive legal perspective, the practice of judicial activism can be understood as the Constitutional Court's effort to achieve substantive justice in the Indonesian legal system. However, the implementation of this practice must adhere to the principle of separation of powers to avoid shifting authority between the judiciary and the legislature in a constitutional democratic system.

Keywords: Constitutional Court, Judicial Activism, Progressive Law, Judicial Review, Indonesian Constitutional Law.

INTRODUCTION

The rule of law is the main foundation in the implementation of modern governance which upholds the principles of justice, democracy and protection of human rights.(Alfidyah, 2025; Hasan et al., 2024; Raharjo et al., 2023)In a democratic state under the rule of law, state power must not be concentrated in a single institution, but rather must be limited through a power-sharing mechanism to prevent abuse of authority. This principle is known through the trias politica theory, which divides state power into legislative, executive, and judicial branches.(Irawan, 2025; Ruhenda et al., 2020; Zahra et al., 2022)Indonesia, as a constitutional democracy, also adopts this principle in its constitutional system by dividing government functions among different state institutions to create a balance of power and ensure fair and accountable governance.

Within the framework of the Indonesian constitutional system, the Constitutional Court has a strategic position as guardian of the constitution.(Purba, 2024; Walangitan, 2025)This institution was established through amendments to the 1945 Constitution and was given the authority to test laws against the constitution and to decide on various constitutional disputes. The Constitutional Court's decision is final and binding and therefore has a major influence on the development of the national legal system.(Putra, 2021; Ru'ati et al., 2022).Syailendra et al. (2024)Through this authority, the Constitutional Court not only functions to ensure that laws comply with the constitution, but also plays a role in maintaining democratic principles and protecting citizens' constitutional rights in state practice.

In practice, the Constitutional Court's role often extends beyond simply interpreting existing legal norms. Some decisions demonstrate a tendency known as judicial activism, where judges not only apply existing law but also interpret it more broadly, resulting in new legal norms.(Hasanah & Kharisma, 2022; Rozaq et al., 2024)The concept of judicial activism was first introduced by Arthur Schlesinger Jr. and refers to a more active judicial approach in responding to social developments and filling legal gaps.(Roux, 2021)In this context, judges no longer function only as implementers of the law (*la bouche de la loi*), but also as inventors of law (*rechtsvinding*) who play a role in the development of the legal system.

The phenomenon of judicial activism is closely related to the idea of progressive law. Progressive law emphasizes that law must be oriented toward human interests and substantive justice, not merely formal legal certainty.(Setyawan, 2025; Siregar, 2024; Wijaya, 2022)Therefore, judges are given the space to creatively interpret the law to address the evolving needs of society. From this perspective, judicial activism can be viewed as an effort to deliver more substantive justice through dynamic and contextual legal interpretation, particularly when existing laws and regulations fail to adequately address social issues.

However, judicial activism is a practice that has generated significant debate among scholars and legal practitioners. Critics argue that excessive judicial activism risks violating the separation of powers principle, as it may cause the judiciary to assume legislative roles. This concern is particularly evident in several Constitutional Court decisions concerning the status of children born outside of marriage, the recognition of customary forests, the expansion of pretrial jurisdiction, and the age requirements for presidential and vice presidential candidates. These cases raise critical questions about the constitutional limits of judicial activism and its legitimacy in Indonesia's democratic legal system.

However, previous studies have not adequately examined the constitutional boundaries of judicial activism in relation to the tension between progressive legal ideals and the separation of powers principle. Existing research tends to be descriptive, focusing on explaining the authority of the Constitutional Court, summarizing judicial decisions, or normatively supporting progressive legal interpretations. This research lacks critical assessments of whether such activism remains

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constitutionally justified within a democratic, rule-of-law framework. Additionally, limited analysis systematically connects key Constitutional Court decisions with a comprehensive theoretical framework integrating judicial activism and progressive law while evaluating its institutional implications.

This study fills this gap by analyzing the Constitutional Court's practice of judicial activism as both a legal interpretation and a constitutional phenomenon with normative and institutional consequences. Specifically, it examines how judicial activism reflects progressive legal principles in achieving substantive justice while critically evaluating its constitutional limits within the separation-of-powers framework. Through this analysis, the study aims to provide a balanced, critical understanding of the Constitutional Court's role in shaping Indonesian constitutional law.

METHOD

Research Design

This study uses a normative legal research approach that focuses on the analysis of legal norms related to the Constitutional Court's authority to conduct judicial activism. Normative legal research was chosen because this study aims to examine legal regulations, constitutional principles, and Constitutional Court decisions related to the phenomenon of judicial activism in the Indonesian state system. The approaches used in this study include the statute approach, case approach, and conceptual approach. The statutory approach is used to analyze provisions in the 1945 Constitution and various regulations related to judicial power, while the case approach is used to examine several Constitutional Court decisions that demonstrate the practice of judicial activism. Meanwhile, the conceptual approach is used to understand the concepts of judicial activism and progressive law from the perspective of legal theory.

Participant

This research does not involve direct participants because it is a normative legal research based on literature. Therefore, the research data sources are obtained from primary and secondary legal materials. Primary legal materials include the 1945 Constitution of the Republic of Indonesia, the Law on Judicial Power, and various Constitutional Court decisions related to the practice of judicial activism. Meanwhile, secondary legal materials are obtained from books, scientific journals, academic articles, and legal literature relevant to the research topic. These sources are used to strengthen the analysis of the Constitutional Court's role in developing constitutional interpretation within the Indonesian legal system.

Instrument

The research instruments used in this study were documentation studies and literature analysis. These instruments were used to collect various relevant legal documents, such as laws and regulations, Constitutional Court decisions, and academic literature discussing the concepts of judicial activism and progressive law. Through these documentation instruments, the researcher identified, classified, and reviewed various legal sources related to the research object. This process enabled the researcher to gain a comprehensive understanding of the practice of judicial activism in Constitutional Court decisions and its implications for legal development in Indonesia.

Data Analysis

The data analysis in this study was conducted using qualitative analysis techniques on the collected legal materials. The analysis process involved several stages: data reduction, data presentation, and conclusion drawing. In the data reduction stage, the researcher selected various

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legal materials relevant to the research focus. Next, the selected data was presented systematically to facilitate interpretation and analysis. The final stage was drawing conclusions, which was conducted by examining the relationship between the concept of judicial activism, the practice of Constitutional Court decisions, and the perspective of progressive law. Through this process, the research is expected to provide a comprehensive understanding of the legitimacy and effectiveness of judicial activism practices in the Indonesian legal system.

To clarify the analytical stages used in this study, the data analysis process flow is presented visually in Figure 1. It depicts the analysis process, starting with the collection of legal materials, through data selection and reduction, data grouping and interpretation, and finally, the conclusion-drawing stage. This visualization aims to provide a more systematic overview of the analytical steps taken, thus facilitating the reader's understanding of the analytical methods used in the study.

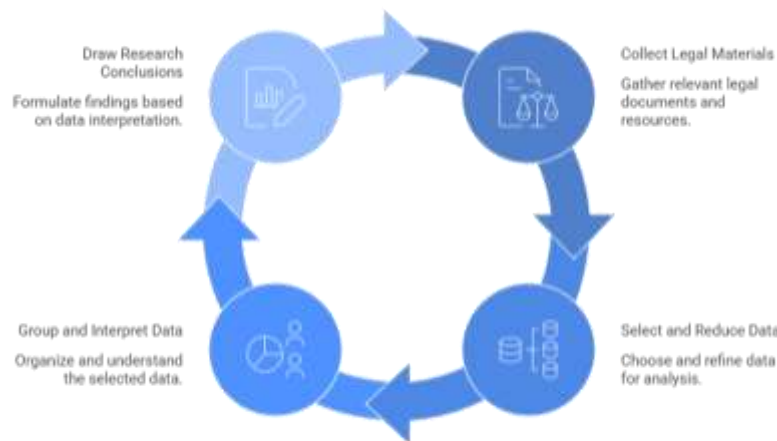


Figure 1. Research Data Analysis Flowchart

RESULTS AND DISCUSSION

Result

The research findings indicate that the Constitutional Court plays a significant role in the development of constitutional law in Indonesia through its practice of judicial activism. In exercising its authority to review laws against the 1945 Constitution, the Constitutional Court not only acts as a constitutional interpreter but, in some cases, also demonstrates a tendency to broaden the interpretation of legal norms to address evolving social dynamics. This demonstrates that Constitutional Court decisions are not merely declarative in nature regarding existing norms but can also result in the formulation of new norms that impact the national legal system.

Based on the analysis of several Constitutional Court decisions, it was found that the practice of judicial activism is reflected in a number of decisions that have a corrective, protective, and adaptive character to the needs of society. These decisions demonstrate how the Constitutional Court strives to interpret the constitution more progressively to guarantee the protection of citizens' constitutional rights. Several decisions that reflect this practice include Constitutional Court Decision Number 46/PUU-VIII/2010 concerning the status of children born outside of marriage, Decision Number 35/PUU-X/2012 concerning the recognition of customary forests, and Decision Number 21/PUU-XIII/2014 concerning the expansion of pretrial objects. These three decisions demonstrate the Constitutional Court's tendency to interpret the law more broadly in order to achieve substantive justice.

Furthermore, the research also shows that the practice of judicial activism can be seen more clearly in Constitutional Court Decision Number 90/PUU-XXI/2023 concerning the age limit for presidential and vice-presidential candidates. In this decision, the Constitutional Court not only assessed the constitutionality of the norm under review but also provided a new interpretation of the provisions concerning the age limit for presidential and vice-presidential candidates. This decision ultimately broadened the meaning of the norm, which previously only regulated the minimum age limit, to one that also takes into account official experience gained through general elections. This change in interpretation demonstrates the Constitutional Court's active role in shaping the direction of legal norm development through its decisions.

The findings of this study also indicate that the practice of judicial activism in Constitutional Court decisions has quite complex implications for the state system. On the one hand, this practice can make a positive contribution in filling legal gaps and addressing social issues not yet addressed by legislation. However, on the other hand, this practice has also given rise to debate regarding the limits of the Constitutional Court's authority, particularly regarding the potential for a shift in its role from a judicial institution to one that resembles a legislative institution. This suggests that the practice of judicial activism needs to be carefully understood to maintain its adherence to the principle of separation of powers in a constitutional democratic system.

Furthermore, from a progressive legal perspective, the research findings indicate that the practice of judicial activism can be understood as the Constitutional Court's effort to realize substantive justice in the Indonesian legal system. This approach emphasizes that law functions not only as a formal rule but also as an instrument to address the evolving needs of society. Thus, the Constitutional Court's practice of judicial activism can be seen as a response to social dynamics that demand a more adaptive and contextual interpretation of the law.

Discussion

The results of the study show that the Constitutional Court has an important role in the development of constitutional law in Indonesia through the practice of judicial activism. (Hidayah, 2025; Vincenzo & Sitabuana, 2022) In exercising its authority to review laws against the 1945 Constitution, the Constitutional Court not only acts as an interpreter of legal norms, but in several decisions has also demonstrated a tendency to broaden legal interpretations to address evolving social dynamics. This situation demonstrates that Constitutional Court decisions are not merely declarative regarding existing norms but can also result in the formulation of new norms that influence the development of national law.

The findings of this study also indicate that the practice of judicial activism in Constitutional Court decisions can be understood through a progressive legal perspective. The progressive legal approach positions law as an instrument for realizing substantive justice for society. (Ambarwati, 2024; Julranda et al., 2022; Sarumpaet1 et al., 2024) Therefore, the Constitutional Court's interpretation of the constitution is not always textual, but also considers the values of justice inherent in society. Thus, the practice of judicial activism can be seen as an effort to bridge the gap between written legal norms and evolving social needs.

However, the practice of judicial activism has also given rise to debate regarding the limits of the Constitutional Court's authority within the constitutional system. Some believe that an overly broad interpretation could potentially shift the role of the judiciary toward a function more similar to that of the legislature. Therefore, it is crucial to place the practice of judicial activism within a constitutional framework that respects the principle of separation of powers to avoid creating imbalances in a constitutional democratic system.

Implications

The findings of this study have important implications for the development of constitutional law in Indonesia. The practice of judicial activism demonstrates the Constitutional Court's strategic role in safeguarding the constitution while simultaneously responding to social changes occurring in society. Through a more progressive interpretation of the constitution, the Constitutional Court can provide more effective protection for citizens' constitutional rights and fill legal gaps that are not yet clearly regulated in legislation.

On the other hand, another implication of this research is the importance of maintaining a balance between efforts to achieve substantive justice and the principle of separation of powers in the constitutional system. The practice of judicial activism must be carried out carefully to avoid creating a conflict of authority between the judiciary and the legislature. Therefore, the integrity of constitutional judges and a transparent oversight mechanism are crucial factors in maintaining the legitimacy of Constitutional Court decisions..

Research contribution

This research provides a theoretical contribution to the development of constitutional law studies, particularly regarding the relationship between judicial activism and progressive law. This research demonstrates that the practice of judicial activism can be understood as a form of implementation of the idea of progressive law that places substantive justice as the primary goal of law. Thus, this research broadens the perspective in understanding the role of the Constitutional Court in legal development in Indonesia. In addition to theoretical contributions, this research also provides practical contributions to the development of the constitutional justice system. Analysis of Constitutional Court decisions shows that the practice of judicial activism can be an important instrument in responding to social dynamics and the legal needs of society. The results of this research are expected to serve as a reference for academics, legal practitioners, and policymakers in understanding the limitations and legitimacy of judicial activism in the Indonesian constitutional system.

Limitations

This study has several limitations that should be considered. First, it uses a normative legal research approach that focuses on the analysis of legislation and Constitutional Court decisions. Therefore, it does not include empirical analysis of the direct impact of judicial activism on society or other state institutions.

Second, the scope of this research is limited to several Constitutional Court decisions deemed representative of the practice of judicial activism. Therefore, this research does not encompass all Constitutional Court decisions that may share similar characteristics. This limitation indicates that the study of judicial activism practices still has ample room for development through further research.

Suggestions

Based on the results of this study, several recommendations can be put forward. First, further research is recommended to combine normative legal research approaches with empirical research to provide a more comprehensive picture of the impact of judicial activism practices on the legal system and social life. Second, a more in-depth study is needed regarding the normative and ethical boundaries of judicial activism practices, particularly regarding the relationship between the judiciary and the legislature within the constitutional system. This is crucial to ensure that the Constitutional Court's interpretation of the constitution remains in line with the principle of separation of powers. Third, further research could also develop a comparative approach by comparing judicial activism practices across countries. This approach can provide a broader perspective on how judicial activism practices are applied in various legal systems and their implications for the development of constitutional law.

CONCLUSION

This research demonstrates that the Constitutional Court plays a significant role in the development of constitutional law in Indonesia through the practice of judicial activism. In exercising its authority to review laws against the 1945 Constitution, the Constitutional Court not only functions as an interpreter of legal norms, but in several decisions also provides broader interpretations, resulting in the formation or expansion of legal norms. This practice is evident in a number of Constitutional Court decisions that are corrective, protective, and adaptive to social dynamics. This condition demonstrates that the Constitutional Court plays a crucial role in safeguarding the constitution while responding to the evolving legal needs of society.

From a progressive legal perspective, the practice of judicial activism can be understood as an effort to realize substantive justice in the Indonesian legal system. Through a more contextual interpretation of the constitution, the Constitutional Court seeks to fill legal gaps and protect citizens' constitutional rights. However, this practice must be placed within the framework of the principle of separation of powers to prevent a shift in authority between the judiciary and the legislature. Therefore, striking a balance between efforts to achieve substantive justice and maintaining the limits of constitutional authority is crucial in ensuring the legitimacy of judicial activism in the Indonesian constitutional system.

AUTHOR CONTRIBUTION STATEMENT

TMJ contributed to the conceptualization of the study, data collection, data analysis, and preparation of the initial draft of the manuscript. QU contributed to research supervision, analysis validation, development of the conceptual framework, and review and refinement of the manuscript. Both authors have read and approved the final version of the manuscript to be published.

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